IN THE HIGH COURT OF BOMBAY AT GOA.

COMPANY APPLICATION NOS. 27-N AND 28-N OF 2002.

Navelink SA & Ors. ... Applicants.

Versus

Western India Shipyard Ltd. ... Respondents.

Mr. M.S. Usgaonkar, Senior Advocate with Mr. A.J. Kenkre, Advocate for the Applicants.

Mr. M.S. Joshi, Advocate for the Respondents.

Coram : P.V. HARDAS, J.

Date : 22nd November 2002.

ORAL ORDER.

Both these applications are being decided by this common Order.

2. Company Application No. 27-N of 2002 is filed by the applicants/petitioners praying therein for permission to the Attorneys appointed by the applicant/petitioner no. 2 to sign the verification. It is stated that the Company Petition No. 8-N of 2000 has been signed and verified by petitioner no. 1. Apparently, the Company Petition has neither been signed nor verified by the petitioner no. 2, though it is claimed that the petitioner no. 1 is an agent/subsidy and/or associate of petitioner no. 2. It is also claimed that all the relevant contract and agreements in the present petition were executed by the petitioner no. 1. The petitioners have also filed at Exhibit 'A' the Power of Attorney.

3. The respondents in their reply have objected to this application on the ground that the Power of Attorney now sought to be produced is dated 23rd January 2002 and thus, the same has been executed much after the petition has been filed. It is also stated by the respondents that the petition has been signed and verified by a person, who has not been appointed as an Attorney by the Power of Attorney now sought to be produced. It is also stated in the reply that the Power of Attorney, dated 14th February 2000, executed by the petitioner no. 1 and the Power of Attorney, dated 23rd January 2002, executed by petitioner no. 2 do not give any power to the Attorneys to file the winding up petition. It is also stated that the names of the Attorneys of petitioner no. 2, whose names are disclosed in paragraph 4 of the application, were earlier employees of Mulla & Mulla and Craigie Blunt & Caroe. In the rejoinder filed, it is stated by the petitioners that the persons, whose names were shown in the Power of Attorney, were neither employees nor clerks of Mulla & Mulla & Craigie Blunt & Caroe at the relevant time or at any given point of time.

4. Company Application No. 28-N of 2002 is filed by the applicants/petitioners praying that one Mr. Samir Kazi, the duly constituted Attorney of petitioner no. 1, be permitted to sign the affidavit, as, at

present, due to some personal difficulties, it is not possible for Ms. Divya Abrol, who had initially verified the petition, to be present in Goa.

5. In the reply the respondents have objected to the application of the petitioners on the ground that granting leave to Samir Kazi to swear an affidavit in support of the amendment would not cure the basic defect in the verification. It is also stated that the constituted Attorneys have no personal knowledge of the facts to file an affidavit. Thus, it is stated that no leave to file an affidavit under Rule 21 of the Companies (Court) Rules 1956 can be granted to Mr. Samir Kazi to file an affidavit on behalf of the petitioners. It is to be noted that the petition is not admitted and the respondents can certainly urge that the affidavit is not as per the Rules or that the affidavit is by a person, who has no knowledge of the facts.

6. I have given my anxious consideration to the rival submissions advanced by the learned counsel for the parties. Defect in the verification is only an irregularity, which can be cured. The petition is yet to be admitted and no prejudice would be caused to the respondents if the applications are allowed.

7. In view of this, both the Company Applications

are allowed.

(P.V. HARDAS)
JUDGE.

ed's.